(1) (3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

WRIT PETITION NO. 61 /2006 Single Bench

PETITIONER : Anand Ram Son of Shri Sampatlal, aged about 43 years, Resident of Village Korra, Tahsil Kurud, District Dhamtari, (C.G.).

VERSUS

RESPONDENTS :

1. Jagdish Singh Son of Shri Arjun Singh, Elected Panch, Gram Panchayat Korra, Block Kurud, District Dhamtari (C.G.).

2. The Returning Officer, Panchayat Election, Polling Booth No. 9, Block Kurud, District Dhamtari (C.G.).

3. The Presiding Officer, Panchayat Election, Polling Booth No. 9, Block Kurud, District Dhamtari (C.G.).

4. The Sub Divisional Officer, (Revenue), Dhamtari, District Dhamtari (C.G.).

P.R. No. 507/06
Presented by Shri S.P. Sahu
dated 30.1.06

30/1/06

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA, 1950 FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI, MANDAMUS ETC. AND FOR APPROPRIATE ORDER/ORDERS, DIRECTION/DIRECTIONS.

1. PARTICULARS OF THE PETITIONER:
As per the cause title.

2. PARTICULARS OF THE RESPONDENTS:
As per the cause title.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.No. 611/2006 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

11.10.2006

Shri P.P. Sahu, counsel for the petitioner.

Shri Y.C. Sharma, counsel for respondent No.1.

Shri Satish Gupta, Dy. Govt. Advocate for the State/respondents No. 2, 3 & 4.

Arguments heard.

Order dictated as follows:

ORAL ORDER
(11.10.2006)

Sunil Kumar Sinha, J.

This is a petition filed under Article 226/227 of the Constitution of India. The petitioner has challenged the legality, validity and propriety of the order dated 22.9.2005 passed by the Specified Officer, (S.D.O., Dhamtari) in election petition No. 3 B/151 year 2004-2005. By the said order, the Specified Officer has dismissed the election petition filed by the petitioner under Section 122 of the M.P. (C.G.) Panchayat Raj Adhiniyam, 1993.

The brief facts are that in the election of Panchayat Ward No. 16 of Village- Korra, respondent No.1 was declared as elected. The aforesaid seat was reserved for Schedule Castes candidates. After declaration of the election results, his election was called in question by the petitioner by filing an election petition under Section 122 of the Panchayat Raj Adhiniyam, 1993.

A perusal of the impugned order would show that the petitioner had taken a ground that respondent No.1 belongs to Kshatriya Castes and he was not a member of Schedule Caste and he was not entitled to contest election from reserved seat, which

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

was reserved for Schedule Caste member. On the preliminary stage, the petition came up for hearing before the Specified Officer on 22.9.2005. The Specified Officer dismissed the petition on the ground that such an objection was not taken by the petitioner either during the course of scrutiny or during the course of completion of election process, therefore, the petition under Section 122 of the Act would not lie on such ground after declaration of the results of the election.

The provisions of Section 122 of the aforesaid Act are clear and unambiguous. It has been provided by sub-section (1) of the said Section that an election under this Act shall be called in question only by a petition presented in the prescribed manner: (i) in case of (Gram Panchayat or Gram Sabha) to the Sub-Divisional Officer (Revenue); (ii) in case of Janpad Panchayat to the Collector; and (iii) in case Zila Panchayat to the Divisional Commissioner and not otherwise. It has further been provided by sub-section (2) that no such petition shall be admitted unless it is presented within thirty days from the date on which the election in question was notified. Sub-section (3) provided that such petition shall be inquired into or disposed of according to such procedures as may be prescribed.

So far as procedure for filing and disposal of election petition are concerned, the Rules have been framed in this regard namely The Madhya Pradesh Panchayats (Election Petitions, Corrupt Practices And Disqualification for Membership) Rules,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

1995. In these Rules, Rule 3 describes about presentation of election petition and Rule 4 describes about parties to the petition. Rule 8 is the Rule, which provides for procedure on receiving petition and thereafter there are other Rules which guide as to how hearing of the petition should be concluded and the order should be passed. The grounds pertaining to the filing of the election petition have also been described in Rule 21 of the aforesaid Rules. In this manner, there is a complete procedure in relation to filing, entertainment and procedure for hearing the election petition and in the manner in which the decision is to be rendered by the Specified Officer after completion of hearing in the election petition.

In the present case, the Specified Officer has not adverted to the provisions of Section 122 of the Act and also to the provision of Rules framed for decision of an election petition and has dismissed the election petition on the preliminary stage holding that the grounds raised in election petition should have been raised earlier. The view taken by the Specified Officer is not in accordance with law and the order deserves to be set aside.

In the result, the petition is allowed. The impugned order dated 22.09.2005, passed by the Specified Officer, is set aside. The matter is remanded back to the Specified Officer for deciding the election petition in accordance with law.

No order as to costs.

Sd/-
Sunil Kumar Sinha
Judge

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